

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6526**

**PETITION OF IGNACIO GONZALEZ**

OPINION OF THE BOARD  
(Hearing Held: July 19, 2017)  
(Effective Date of Opinion: July 27, 2017)

Case No. A-6526 is an application by Ignacio Gonzalez (the "Petitioner") for a variance from the requirement in Section 59-4.4.4.B.2 of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building. The Petitioners wish to locate a swimming pool in their yard.

The Board of Appeals held a hearing on the application on Wednesday, July 19, 2017. Mr. Gonzalez appeared at the hearing pro se, along with Analia Castelo, with whom he owns the property, and Jon Coakley, his contractor. All three testified in support of the application.

Decision of the Board: **Variance Granted.**

**EVIDENCE PRESENTED**

1. The subject property is Lot 22, Bradley Boulevard Estates Subdivision located at 9208 Farnsworth Court, Potomac, Maryland, 20854, in the RE-2 Zone. The Petitioner purchased this property in 2013.
2. The subject property is a five-sided through lot with frontage on two roadways: arced frontage along Farnsworth Court to the northwest, and slightly-arced frontage along Bradley Boulevard to the southeast. There is no access to the property from Bradley Boulevard. See Exhibits 4(b) and 7.
3. The subject property contains a single family house which was built in 1955, and is accessed via a driveway which extends west from the house to Farnsworth Court. The front of the house is oriented towards this driveway. This westward orientation of the house is evidenced by (1) the front door, which is located on the house's western façade;

(2) a walkway leading from the driveway to the front door; and (3) a driveway leading to an attached garage on the western façade of the home. In addition, the property is addressed on Farnsworth Court, and has its mailbox there. See Exhibit 3.

4. The Petitioners are seeking to construct an inground residential swimming pool and spa directly behind and east of the house and existing rear patio, on the eastern portion of this lot. DPS considers this property to have two fronts and no rear lot line. The Justification Statement states that without a rear lot line, DPS cannot "confirm the proposed pool/spa is located behind the rear building line," as required by the Zoning Ordinance, and has indicated that the proposed pool requires a variance to be located on this through lot. See Exhibit 3.

5. With respect to the portion of the property in which the pool is proposed, the Justification Statement notes that:

The Eastern portion of the property – i.e., the area located opposite to the building's front – serves as the typical residential rear yard, with a walk-out stone patio with grilling station. This is the proposed pool/spa location. The remaining land consists of lawn and mature trees and other plants which provide screening of Bradley Boulevard and neighboring houses.

See Exhibit 3.

6. The Justification Statement notes that several properties within the immediate neighborhood have swimming pools, and that "[a]ll of the pools are located behind the rear building line that is opposite the architectural front of the primary structure just like the pool/spa proposed by the Petitioners." See Exhibit 3.

7. Mr. Coakley testified that the functional front of this home faces Farnsworth Court, and that the proposed swimming pool would be behind the house, on the side opposite the side with the front door. He testified that there is no other place on the property to locate a pool without a variance, stating that a variance would be required if the pool were to be located in the side yard (or the front yard facing Farnsworth Court), and that a side yard placement would put the pool closer to neighbors. Mr. Coakley testified that several other homes in the neighborhood have swimming pools, and that because the property is treed and wooded on the Bradley Boulevard side, there would be no real view of the pool when the trees have their leaves. He testified that there is no access to the subject property from Bradley Boulevard.

8. Mr. Gonzalez testified that he had consulted with the other neighbors on his cul-de-sac, and that none of them voiced concerns about his proposed pool. He testified that his "rear" yard (i.e. the area on the side of his house opposite its functional front) slopes down to Bradley Boulevard at about a 45 degree angle.

9. Ms. Castelo testified that the subject property was large, and that the pool would be located away from the road and would not bother anyone.

## FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and that of his witnesses, and on the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds that the subject property is a five-sided through lot, with multiple side yards and two front yards. The Board further finds that this lot is unusual because as a technical matter, it has no rear lot line and no rear yard, as those terms are understood by the County's Department of Permitting Services, even though as made clear by the evidence, there is a functional front of this house, and, by extrapolation, a functional rear yard. Because this property lacks a rear lot line, DPS is unable to determine whether the proposed accessory structure, a swimming pool, is located behind the rear building line, as required by the Zoning Ordinance, and will not allow the construction of any accessory structures on the property without a variance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner purchased this property in 2013, and took no actions to create its unusual characteristics.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

Even though this property has a functional rear yard, because there is no rear lot line for this property, it is not possible to determine a location "behind the rear building line of the principal building" as the Zoning Ordinance requires for an accessory structure. Thus no accessory structure can be located anywhere on this lot without a variance, which the Board finds is a practical difficulty for the Petitioner. The Board further finds that the grant of the requested variance is the minimum necessary to overcome this practical difficulty.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the Petitioner to have a swimming pool is entirely consistent with the residential uses contemplated for the area by the Potomac Subregion Master Plan. Indeed, the Justification Statement submitted in support of this variance

and testimony at the hearing indicate that several other homes in the neighborhood have swimming pools. See Exhibit 3.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

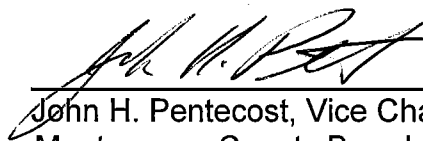
The Board can find no evidence that locating a pool in the proposed location, behind the architectural rear of the house, will adversely affect the use and enjoyment of abutting or confronting properties. Indeed, the Petitioner testified that none of his neighbors on the cul-de-sac oppose the proposed pool. In addition, the Justification Statement submitted in connection with this variance requests describes "mature trees and other plants" which screen the view of this property from Bradley Boulevard and neighboring homes, a statement confirmed in testimony. See Exhibit 3.

Accordingly, the requested variance to allow construction of a swimming pool in the front yard is **granted**, subject to the following condition:

1. Petitioner shall be bound by his testimony and that of his witnesses, and by exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

Therefore, based upon the foregoing, on a motion by Edwin S. Rosado, seconded by Bruce Goldensohn, with John H. Pentecost, Vice Chair, and Stanley B. Boyd in agreement, and with Carolyn J. Shawaker necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
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John H. Pentecost, Vice Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 27th day of July, 2017.

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.